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BOMBAY LAW REPORTER

[2006

2006 Vol. 108 (4) Bom. L.R. 3182*

IN THE HIGH COURT OF BOMBAY

St. Francis Industrial Training Institute and Ors.

v.

P.J. Jose and Ors.

WRIT PETITION NO.2280 OF 2006

DECIDED ON: 16.10.2006

Judge

Dr. D.Y. Chandrachud, J.

Service — Termination — School Tribunal — Jurisdiction of — Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) — First Respondent, holding post of an instructor, with Petitioner-institute was terminated from service on ground of loss of confidence — First Respondent filed an appeal before School Tribunal against order of termination — Tribunal issued orders directing Petitioners to pay backwages together with compensation of 12 months to First Respondent in lieu of reinstatement — Hence, present

⁹ Ed.: MANU/SC/1418/1995: 1995 Supp (4) SCC 426

* MANU/MH/0730/2006

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a petition — Held, unless a person is an employee of a private school, Tribunal would have no jurisdiction — First Petitioner was not recognized by Director of Vocational Education and Training or by any of authorities spelt out in Section 2(21) — Therefore, Tribunal had erred in assuming jurisdiction in a case where it had no jurisdiction to adjudicate under Section 9(1) — Petition allowed

b Civil — Principle of estoppel — Held, there can neither be an estoppel against statute nor can jurisdiction upon Tribunal be confirmed by consent — It could not be said that since enquiry was initiated under provisions of MEPS Act and rules framed thereunder, Petitioner must be estopped from denying application of Act

c Facts

First Respondent, holding the post of an instructor, with the Petitioner-Institute was terminated from service on the ground of loss of confidence. First Respondent moved the School Tribunal against the order of termination. Tribunal issued orders directing Petitioners to pay backwages together with compensation of 12 months to First Respondent in lieu of the reinstatement.

d Hence, present writ petition.

Held

e [1] On behalf of the First Respondent, however, it was sought to be urged that the enquiry was initiated under the provisions of the M.E.P.S. Act, 1977 and the rules framed thereunder and the Petitioners must therefore be estopped from denying the application of the Act. The submission cannot be accepted for the simple reason that there can neither be an estoppel against statute nor can jurisdiction upon the Tribunal be confirmed by consent. The statute applies to private schools and unless the institution fulfills the definition of the expression private school, the Act does not apply. The right to appeal is

f conferred by Section 9 and unless a person is an employee of a private school the Tribunal would have no jurisdiction. [p. 3191, para 14 h]

g [2] In order to be a private school, the institution has to be recognized by one of the authorities provided for in Section 2(21). Plainly in the present case, as an industrial training institute, the First Petitioner is not recognized by the Director of Vocational Education and Training or by any of the authorities spelt out in Section 2(21). [p. 3192, para 16 f]

Cases referred to

h *Ashok Leyland Ltd. v. State of T.N.* MANU/SC/0020/2004: (2004) 3 SCC 1: 2004 (1) SCALE 224: [2004] 134 STC 473 (SC) (mentioned) [p. 3192, para 15 c]

Mathura Prasad Bajoo Jaiswal MANU/SC/0420/1970: (1970) 1 SCC 613: AIR 1971 SC 2355: (1971) 73 BomLR 492: [1970] 3 SCR 830 (mentioned) [p. 3192, para 15 c]

i *Sonepat Co-operative Sugar Mills Ltd. v. Ajit Singh* MANU/SC/0105/2005: (2005) 3 SCC 232: AIR 2005 SC 1050: 2005 (2) AWC 1130 (SC): 2005 (3) ESC 305: [2005 (2) JCR 311 (SC)]: JT 2005 (2) SC 370: (2005) 1 LLJ 1122 SC: (2005) 140 PLR 645: 2005 (2) SLJ 188 (SC): (2005) 2 UPLBEC 1138 (referred) [p. 3192, para 15 a]

Suryakant Sheshrao Panchal v. Vasanttrao Naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal MANU/MH/0353/2002: 2002 (5) BomCR 95: (2002) 3 BomLR 281: 2002 (3) MhLJ 659 (discussed) [p. 3191, para 13 c]

Legislation referred to

Apprentices Act, 1961	[p. 3189, para 9 g]	
Constitution of India, Article 226	[p. 3184, para 2 g]	
Industrial Disputes Act, 1947, Section 2(s)	[p. 3192, para 15 a]	b
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977		
Section 8	[p. 3191, para 13 g]	
Section 9	[p. 3184, para 2 g]	
Section 9(1)	[p. 3192, para 17 g]	c
Section 2(20)	[p. 3184, para 3 i]	
Section 2(21)	[p. 3185, para 3 a]	
Section 2(24)	[p. 3185, para 4 i]	
Section 2(25)(6)	[p. 3185, para 3 b]	
Section 2(25)(6A)	[p. 3185, para 3 b]	d
Maharashtra Secondary and Higher Secondary Education Boards Act, 1965, Section 3(1)	[p. 3185, para 3 e]	

Counsel

For Appellant/Petitioner/Plaintiff: S.C. Naidu, Major Gujar and N.P. Dalvi, Advs., i/b., M/s. C.R. Naidu & Co. e

For Respondent(s)/Defendant: S.K. Shinde and T.G. Vartak, Advs., for Respondent No. 1.

For State: S.M. Dandekar, AGP

ORAL JUDGMENT

Dr. D.Y. Chandrachud, J. f

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waive service. By consent and at the request of the learned Counsel taken up for hearing and final disposal.

2. The issue which arises before the Court in these proceedings under Article 226 of the Constitution is whether an employee of an Industrial Training Institute can prefer an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to the Tribunal constituted thereunder. Under Sub-section (1) of Section 9 an appeal can be filed before the Tribunal by "any employee in a private school". An appeal lies against an order of dismissal, removal or termination, a reduction in rank or supersession while granting promotions. Therefore, unless a person is an employee of a private school, an appeal cannot be maintained before the Tribunal. g

3. The expression "Private School" is defined by Section 2(20) of the Act as follows: 2(20) "Private School" means a recognized school established or administered by a Management other than the Government or a Local Authority." The definition postulates that in order to be a private school, h i

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- a the school has to be recognized. The expression “recognized” is defined by Section 2(21) as follows:
- b 2(21) “recognized” means recognized by the Director, the Divisional Board or the state Board or by any officer authorized by him or by any of such Boards.” Consequently, the recognition which the Act postulates is recognition by (i) the Director; (ii) the Divisional Board or (iii) the State Board. The expressions Director, Divisional Board and State Board are defined by Clauses (6), (6A) and 25 of Section 2 as follows:
- c 2(6) “Director” means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government.
- c 2(6A) “Divisional Board” means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965.
- d (25) “State Board” means:
- d (a) The Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;
- d (b) The Board of Technical Examinations, Maharashtra State;
- d (c) The Maharashtra State Board of Vocational Examinations or
- d (d) The Art Examinations Committee.
- e Section 3(1) of the Act provides that the Act shall apply to all private schools in the State of Maharashtra whether receiving any grant in aid from the State Government or not. Hence, an educational institution would be governed by the Act only if and in so far as it meets the definition of the expression “private school” in Section 2(20). The definitions which have been adverted to hereinabove viz. those in Clauses (20) and (21) of Section 2 together with those in Clauses 6, 6(a) and 25 thereof, together with Section 3(1) would make it abundantly clear that a private school
- f under the Act is an educational institution which is recognized by either of the following authorities viz:
- g (a) The Director of Education, State of Maharashtra
- g (b) The Director of Technical Education, State of Maharashtra
- g (c) The Director of Vocational Education, State of Maharashtra
- g (d) The Director of Art, State of Maharashtra
- g (e) The Divisional Board established under the Maharashtra Secondary and Higher Secondary Board Act, 1965 or the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965
- h (f) The Board of Technical Examination, State of Maharashtra
- h (g) Maharashtra State Board of Vocational Examinations
- h (h) The Arts Examination Committee.
- i 4. The expression “school” is defined in Clause (24) of Section 2 to mean a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including

technical, vocational or art institution or any part of such institution which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level. In order to attract the application of the Act, however, an institution must apart from being a school be a private school. A private school, to recapitulate, is a school which is recognized and which is established or administered by a management other than the government or Local Authority. The recognition of the institution has to be by one of the authorities spelt out in Section 2(21). Else such an institution would not be treated as being recognized for the purposes of the M.E.P.S. Act, 1977.

5. The issue which falls for determination in these proceedings arises in the background of an appeal that was filed by the First Respondent to the School Tribunal at Mumbai in order to challenge an order of termination dated 20th December, 2001 issued on the ground of a loss of confidence. The First Respondent was holding the post of an instructor in the mechanical Section of the Petitioners. A chargesheet was issued to the First Respondent in a disciplinary proceeding. An enquiry Committee was constituted and ultimately an order of termination came to be passed. The First Respondent moved the School Tribunal. The Petitioners questioned the jurisdiction of the Tribunal to entertain the appeal on the ground that as an industrial training institute, it was not a private school within the meaning of Section 2(20) of the Act, since it was not recognized either by the Director, the Divisional Board or the state Board as required by Section 2(21). The Tribunal turned down the submissions and by its order dated 21st April, 2005 directed the Petitioners to pay backwages from the date of the order of termination until the order of the Tribunal together with compensation of 12 months in lieu of reinstatement. While holding that the termination was not lawful the Tribunal held that the First Respondent had taken political support in order to pressurise the management and had utilized the electronic media to highlight his grievance. The Tribunal held that the relations between the parties being strained, an order of reinstatement would not facilitate the cause of education in the institution.

6. On behalf of the Petitioners it has been submitted that an industrial training institute does not fulfill the requirement of a private school in Section 2(20) of the Act. Besides referring to the statutory definitions to which a reference has already been made hereinabove, Counsel appearing for the Petitioners relied on the affidavits filed on behalf of the State Government which support the contention of the Petitioners. Since the issue however relates to the jurisdiction of the Tribunal, it would not be appropriate for this Court to rest merely on the affidavits filed on behalf of the State since the question of jurisdiction would have to be determined with reference to the applicable statutory provisions. On the other hand, on behalf of the First Respondent while supporting the order of the Tribunal, learned Counsel submitted that the management had instituted the enquiry under the M.E.P.S. Act, 1977 and had pursued the enquiry thereunder in which case it must be estopped from denying the applicability of the Act to the institution. These submissions now fall for determination.

7. Section 3(1) of the Act which governs the application of the Act specifically provides that the Act shall apply to all private schools in the State of Maharashtra whether or not the school receives grant in aid from the State Government. In

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a order to be a private school, the school must fulfill two requirements spelt out in
 Clause (20) of Section 2. Firstly, the school has to be recognized and secondly, it
 has to be established or administered by a management other than the
 government or Local Authority. In order to be a recognized school, the school
 must meet the requirements in Clause (21) of Section 2 which is recognition by
 the Director, the Divisional Board or the State Board or by an officer authorized
 b by him or any of such Boards. In the present case, it is an admitted fact that the
 Petitioner which is an industrial training institute is not recognized either by
 the Divisional Board as defined in Clause 6 (a) of Section 2 or by the state Board
 as defined in Clause 25. The expression "Director" is defined by Clause (6) of
 Section 2 to mean that (i) the Director of Education ; (ii) the Director of Technical
 Education; (iii) the Director of Vocational Education and Training and (iv) the
 c Director of Art appointed as such by the State Government. The First Petitioner
 was established in 1964 with the object to establish, maintain and develop an
 industrial training institute at Borivli (West). An application for affiliation was
 made to the National Council for Training in Vocational Trades (NCVT). Affiliation
 was granted in 1965 by the NCVT for the trades of turner and motor mechanics
 and in 1967 for the trades of fitter, carpenter, hand composition, proof reading,
 d printing machine operator and electrician. In 1976, the NCVT granted affiliation
 for the trade of mechanical draughtman. The Director of Technical Education
 by his letters dated 28th December, 1965, 20th September, 1967 and 7th May, 1976
 communicated affiliation thus granted by the Government of India and the
 National Council for Training in Vocational Trades. On 4th December, 2001 the
 e Deputy Director, Vocational Education and Training wrote to the Petitioner stating
 that the National Council for Vocational Training, New Delhi had granted
 affiliation to the First Petitioner albeit through the office of the Directorate for
 Vocational Education and Training. This letter was in the context of the issue as
 to whether the permission of the State Directorate was required for the
 appointment of the staff of the institute, the view of the State being that no such
 f permission was necessary.

8. In the proceedings which were instituted by the First Respondent before
 the School Tribunal an affidavit in reply was filed by the District Vocational
 Education and Training Officer on behalf of the Director (Training), Directorate
 of Vocational Education and Training of the State of Maharashtra. The affidavit
 g in reply stated that the Director (Training), Vocational Education and Training
 Directorate only grants a prior permission on behalf of the Government of
 Maharashtra for commencing vocational courses in private unaided industrial
 training centers in the State. However, after the scrutiny is carried out of the
 course of studies, permanent affiliation (recognition) is granted by the Director
 General, Employment and Training. Consequently, the view of the State
 h Directorate was that the provisions of the M.E.P.S. Act and the rules framed
 thereunder would not apply. It may also be noted that an affidavit was filed
 on behalf of the Director of Technical Education noting the bifurcation of
 that Directorate upon which vocational education ceased to fall within the
 purview of the Directorate of Technical Education. The subject thereafter
 i came under the Director of Vocational Education and Training.

9. A scheme for the establishment and regulation of Industrial Training
 Institutes in the country was notified by the Government of India, Ministry of

Labour through the Directorate General of Employment and Training. The text of the training manual brought out by the Government of India contains comprehensive provisions relating to the organization of Industrial Training Institutes, the administration of such institutes, appointment of staff and fulfillment of prescribed standards and other parameters. The background in which the National Council for Vocational Training came to be constituted is set out therein as follows:

In pursuance of the recommendation of the All India Council for Technical Education, the Government of India in the Ministry of Labour Resolution No. RTA-428(5)/ dated the 22nd May, 1951, appointed a Committee called the National Trade Certification Investigation Committee with instructions to prepare a scheme for the establishment of an All India Trades Board which would award certificates of proficiency to craftsmen in the various engineering and building trades. The report of this Committee as also the recommendation of the Training and Employment Services Organisation Committee (known as the Shiva Rao Committee) have been considered by the Government of India. The government agreed with both the Committees that there is need for setting up a central agency for co-ordinating the training programmes in the country bringing about uniformity of standards and awarding certificates of proficiency in craftsmanship on an All-India basis. Such a step is the interest of both the industry and the workers in as much as it ensures that the holders of National Certificates possess a minimum recognised degree of skill. In addition, it facilitates mobility of tradesmen and their employment. The Government of India have also decided to transfer the administration of the training organisation under the Directorate General of Resettlement and Employment to the control of the State Government concerned, retaining for themselves the functions of coordinating craftsmen training and laying down the training policy. This decision has further accentuated the need for central agency for assisting or advising the Central Government in the discharge of their responsibilities regarding craftsmen training. It has accordingly been decided in consultation with the State Governments and other concerned parties, to set up a National Council for Vocational Training. Accordingly with a view to ensure and maintain uniformity in the standards of training all over the Country, the National Council for Vocational Training, an advisory body, was set up by the Government of India in the year 1956. The Council has been entrusted with the responsibilities of prescribing standards and curricula for Craftsmen Training, advising the Government of India on the overall policy and programmes, conducting All India Trade Tests and awarding National Trade Certificates. The National Council is chaired by the Minister of Labour, with members representing Central and State Government departments, employers" and workers" organisations, professional and learned bodies, All India Council for Technical Education, Scheduled Castes and Scheduled Tribes, All India Women"s Organisation, etc. The State Council for Vocational Training at the state level and the Trade Committees have been established to assist the National Council.

The headquarters of the National Council are in New Delhi and the functions of the council are as follows:

(d) FUNCTIONS: The functions of the Council shall be to

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- a 1. Establish and award National Trade Certificates in engineering, building, textile and leather trades and such other trades as may be brought within its scope by the Government of India;
- b 2. Prescribe standards in respect of syllabi, equipment, scale of accommodation, duration of courses and methods of training;
- c 3. Arrange trade tests in various trade courses and lay down standards of proficiency required for a pass in the examination leading to the award of National Trade Certificate;
- d 4. Arrange for ad-hoc or periodical inspections of training institutions in the country to ensure that the standards prescribed by the council are being followed;
- e 5. Recognise training institutions run by government or by private agencies for purposes of the grant of National Trade Certificates and lay down conditions for such recognition;
- f 6. Co-opt, if necessary, any person or persons to advise the council in connection with its work;
- g 7. Prescribe qualification for the technical staff of training institutions;
- h 8. Prescribe the standards and conditions of eligibility for the award of National Trade Certificates;
- i 9. Generally control the conditions for the award of National Trade Certificates;
10. Recommend the provision of additional training facilities wherever necessary and render such assistance in the setting up of additional training institutions or in the organisation of additional training programmes as may be possible;
11. Advise the Central government regarding distribution to State Governments of the contribution of the Government of India towards expenditure on the Craftsmen Training Scheme;
12. Perform such other function as may be entrusted to it by the Government of India;
13. Perform such functions as are assigned by or under the Apprentices Act, 1961." (emphasis supplied) Recognition of training institutions is expressly one of the prescribed functions of the National Council for Vocational Training, New Delhi.
10. The Council is constituted by the Government of India and, inter alia, consists of a representative from each State Government and the Union Territories amongst other members. The inspection of training institutes is provided for in the following terms:
 - h (j) Inspection of Training Institutes: The Council's functions in regard to inspection of Training Institutes shall be exercised through the Directorate of Training. Training institutions which have already been recognised or which have applied for recognition by the National Council shall afford all facilities for inspection to the staff of the Directorate of Training or any member of the National Council examining body in a state or of any Committee appointed by the National Council.
 - i 11. Each State has a State Council for vocational training which functions as a state agency to advise the State Government in carrying out the training

policy laid down by the National Council and to co-ordinate the Vocational Training Programme throughout the state. The functions of the State Council are as follows: (b) FUNCTIONS: The functions of the State Council are:

1. to carry out the policy of the National Council with regard to the award of National Trade Certificates in engineering and non engineering trades as may be brought within its scope by the Central or State Government;

2. to implement the decision and carry out the policy laid down by the National Council in respect of syllabi, equipment, scale of accommodation, duration of courses and method of training;

3. to establish State Board of Examination in vocational trades;

4. to arrange for ad-hoc or periodical inspection of the training institutes/ centres in the state and ensure that the standards prescribed by the National Council are being followed;

5. to co-opt, if necessary, any person or persons to advise the state Council in connection with its work;

6. to ensure that the staff is employed according to the qualifications prescribed by the National Council and relax qualifications in special circumstances to be recorded, for trades where such staff is not easily available;

7. to ensure that the examinations are conducted by the State Board of Examinations according to the standards and the manner prescribed by the National Council;

8. to counter-sign and issue the National Trade Certificates to successful candidates;

9. to recommend the provision of additional training facilities, wherever necessary, and render such assistance in the setting up of additional training programmes as may be necessary;

10. to advise the State Government regarding expenditure on different training schemes; and

11. to perform such other functions as may be entrusted to it by the State Government.

12. The procedure for affiliation of training institutes to the NCVT is laid down in Appendix XIX. The procedure envisages that the State Director invites applications for seeking permission to start training on the pattern of the Craftsman Training Scheme. A standing Committee is constituted for inspecting the Applicant institute. The standing Committee after verifying available infrastructure facilities submits its recommendations. The State Director forwards the inspection report to the NCVT at Delhi. The inspection report may be scrutinized by the Directorate General of Employment and Training. Final orders conveying the grant of permanent affiliation are communicated after obtaining the approval from a Sub-committee of NCVT dealing with affiliation. A procedure has been prescribed in Appendix XIX for seeking permanent affiliation to the NCVT. At this stage, it would suffice to note that the power to grant permanent affiliation is vested with the National Council for Vocational Training. The aforesaid provisions thus abundantly make it clear that the power to grant recognition to an industrial training institute is vested in the National Council for Vocational Training, New Delhi. In fact, one of the functions specifically assigned to the National Council is to

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a recognise institutions run by government or by private agencies for the grant
of National Trade Certificates and prescribe the conditions for such
recognition. The State Council acts as an implementing agency for carrying
out the policy of the National Council. The grant of recognition is a function
of the National Council. The State Director of Vocational Education and
Training was, therefore, correct in his assessment of the legal position. An
b industrial training institute is not recognized by the Director of Technical
Education or by the Director of Vocational Education and Training. That being
the position, the First Petitioner cannot be regarded as a private school within
the meaning of Section 2(20) because it was not recognized by any of the
authorities as stipulated in Section 2(21) of the Act.

c 13. The relevant provisions of the M.E.P.S. Act 1977 came up for consideration
of a Full Bench of this Court in *Suryakant Sheshrao Panchal v. Vasant Rao Naik
Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal*¹ 2002 (5) Bom. C.R.
95 where it was held that an ashram school which has classes below the
seventh standard does not require the recognition of the Maharashtra Board
of Higher Secondary Education and its employees will not be entitled to avail of
d a remedy of an appeal before the School Tribunal under Section 9 of the Act.
The Court held that when the Act has confined the remedy of an appeal to an
employee of a private school, it was not open to the state to amend the statutory
provisions by administrative instructions in the form of a code of instruction:

e We now come to the Ashram Schools Code as formulated by the State
Government in the year 2001. It is well established in law that the
provisions of a statute cannot be amended by administrative orders,
circulars or Codes. The provisions of Section 9 of the M.E.P.S. Act state
that notwithstanding anything contained in any other law or contract
for the time being in force any employee in a private school who is
dismissed or removed or whose services are otherwise terminated or
f who is reduced in rank by the order passed by the management or who
is superseded by the management while making an appointment to any
post by promotion shall have a right of an appeal and may appeal against
any such order or suppression to the Tribunal constituted under Section
8 of the said Act. When a statute has provided a remedy to an employee
g in a private school, such a remedy cannot be extended to an employee
in any school and the meaning of the terms "employee" and "private
school" cannot be altered or amended by formulating a Code.

h 14. On behalf of the First Respondent, however, it was sought to be urged
that the enquiry was initiated under the provisions of the M.E.P.S. Act, 1977
and the rules framed thereunder and the Petitioners must, therefore, be
estopped from denying the application of the Act. The submission cannot be
accepted for the simple reason that there can neither be an estoppel against
statute nor can jurisdiction upon the Tribunal be confirmed by consent. The
statute applies to private schools and unless the institution fulfills the
definition of the expression private school, the Act does not apply. The right
to appeal is conferred by Section 9 and unless a person is an employee of a
i private school, the Tribunal would have no jurisdiction.

¹ Ed.: MANU/MH/0353/2002: (2002) 3 BomLR 281: 2002 (3) MhLJ 659

15. In *Sonepat Co-operative Sugar Mills Ltd. v. Ajit Singh*² (2005) 3 SCC 232 the Supreme Court held that the jurisdiction of the Industrial Court to make an award under the Industrial Disputes Act, 1947 is dependent on whether the employee concerned is a workman or not within the meaning of Section 2(s). When such an issue is raised, the findings of the Labour Court are subject to judicial review since the issue raises a question of the jurisdiction of the Labour Court. The principles of res judicata, estoppel or waiver were held to be procedural principles which would not preclude a decision on the jurisdictional question. The Supreme Court held as follows:

27. The principle of res judicata belongs to the domain of procedure. When the decision relates to the jurisdiction of a Court to try an earlier proceeding, the principle of res judicata would not come into play. (See *Mathura Prasad Bajoo Jaiswal*³ (1970) 1 SCC 613.

28. An identical question came up for consideration before this Court in *Ashok Leyland Ltd. v. State of T.N.*⁴ ((2004) 3 SCC 1) wherein it was observed: SCC p. 44, para 118)

118. The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata.

16. The Tribunal in the present case noted that the First Petitioner was recognized by the NCVT. The Tribunal was, however, of the view that since the institution is under the control of the Director of Vocational Education and Training for the purpose of training and conduct of examinations and since the Directorate had granted an initial permission to run the institute, it must be held to be recognized by the Director. The Tribunal was manifestly in error. In order to be a private school, the institution has to be recognized by one of the authorities provided for in Section 2(21). Plainly in the present case, as an industrial training institute, the First Petitioner is not recognized by the Director of Vocational Education and Training or by any of the authorities spelt out in Section 2(21).

17. In the circumstances, the Tribunal has erred in assuming jurisdiction in a case where it had no jurisdiction to adjudicate under Section 9(1) of the M.E.P.S. Act 1977. The Judgment of the Tribunal dated 21st April, 2006 (Exh. M) is accordingly quashed and set aside. However, while doing so it is clarified that this shall not preclude the First Respondent from seeking such remedies as are available in law in order to challenge the order of termination. The petition is allowed in these terms. No order as to costs.

2 Ed.: MANU/SC/0105/2005: AIR 2005 SC 1050: 2005 (2) AWC 1130 (SC): 2005 (3) ESC 305: [2005 (2) JCR 311 (SC)]: JT 2005 (2) SC 370: (2005) 1 LLJ 1122 SC: (2005) 140 PLR 645: 2005 (2) SLJ 188 (SC): (2005) 2 UPLBEC 1138

3 Ed.: MANU/SC/0420/1970: AIR 1971 SC 2355: (1971) 73 BomLR 492: [1970] 3 SCR 830

4 Ed.: MANU/SC/0020/2004: 2004 (1) SCALE 224: [2004] 134 STC 473 (SC)